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No. 205

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Supreme Court of the United States

OCTOBER TERM, 1961

J. W. FREE, *Petitioner,*

v.

JAMES F. BLAND, *Respondent*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

BRIEF FOR PETITIONER

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December 22, 1961.

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statute and Regulations Involved	3
Statement	4
Summary of Argument	8
Argument	10
I. The Treasury Regulations Effectively Provide for Survivorship of Properly Registered Coowner Savings Bonds Regardless of Whether Such Survivorship Is Recognized or Permitted by Local Law	12
A. The Language of the Regulations Is Directed to Ownership, Not Method of Payment	17
B. The Treasury Department Has Consistently Interpreted the Survivorship Regulations As Controlling Substantive Ownership	20
C. The Overwhelming Weight of Authority of the Courts Which Have Considered the Question Supports the Treasury Department's Interpretation of Its Regulations	22
II. The Savings Bonds Were Properly Registered in the Names of Mr. and Mrs. Free As Coowners, and No Fraud Is Shown on This Record	25
A. Registration of the Bonds in Coownership Form Properly Expressed Their Actual Ownership	26
B. Use of Community Property by a Husband to Purchase Coowner Savings Bonds in His Own and His Wife's Name Without Prior Consultation With Her Does Not Alone Constitute Fraud Justifying Refusal to Recognize Survivorship	28
Conclusion	33
Appendix—Treasury Department Circular 530, Eighth Revision, December 31, 1957, 31 C.F.R. Part 315, 22 Fed. Reg. 11065	35

Statutes and Regulations—Continued

	Page
1 Fed. Reg. 2212	17, 18, 19
3 Fed. Reg. 3128	14, 18, 19
5 Fed. Reg. 1267	18
6 Fed. Reg. 2191	18
8 Fed. Reg. 8744	18
22 Fed. Reg. 11065	19, 20

Miscellaneous:

37 A.L.R. 2d 1221	22
40 A.L.R. 2d 788	22
168 A. L. R. 245	22
173 A.L.R. 550	22
87 Cong. Rec. 850 (1941)	15, 20
Casner, Vol. II, *American Law of Property* (1953) § 7.3	32
Hearings on H.R. 2959 before the Senate Committee on Finance, 77th Cong., 1st Sess., p. 5 (1941)	15

Supreme Court of the United States

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

BRIEF FOR PETITIONER

This case is before the Court on writ of certiorari (368 U. S. 811) to review a judgment of the Supreme Court of Texas, which refused to give effect to a regulation of the Secretary of the Treasury [31 C.F.R. § 315.61] that upon the death of one coowner of certain United States Savings Bonds, "the survivor will be recognized as the sole and absolute owner", holding that the regulation did not apply in a situation in which such Savings Bonds were purchased with the community property of the two coowners. The Supreme Court of Texas rested its determination solely upon another decision handed down while this case was pending for decision in that court [*Hilley* v. *Hilley*, 161 Tex. 569, 342 S.W. 2d 565 (1961), Appendix B

to Petition for Certiorari, p. 13a], in which it specifically overruled a prior decision upholding the applicability of the federal regulations to this situation [*Ricks* v. *Smith*, 159 Tex. 280, 318 S.W. 2d 439 (1958)].

OPINIONS BELOW

The District Court of Upshur County, Texas, rendered no opinion. Its judgment appears in the Record at p. 28. The opinions of the Texas Court of Civil Appeals (R. 31) and of the Supreme Court of Texas (R. 53) are reported at 337 S.W. 2d 805 and 344 S.W. 2d 435, respectively. The judgment of the Supreme Court of Texas appears in the Record at p. 54. The opinion of that Court in *Hilley* v. *Hilley*, which was held by the court to control the instant case, is reported at 161 Tex. 569, 342 S.W. 2d 565, and appears in Appendix B to the Petition for Certiorari in this Court at pp. 13a *et seq.* thereof.

JURISDICTION

The judgment of the Supreme Court of Texas was entered on March 8, 1961 (R. 54). A timely Petition for Rehearing filed by Petitioner was denied by that court on April 5, 1961 (R. 58). On July 5, 1961, a Petition for Certiorari was filed in this Court to review this decision. This Court granted the writ on October 9, 1961, and transferred the case to the Summary Calendar (368 U.S. 811). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Do the regulations promulgated by the Secretary of the Treasury of the United States with respect to the registration of, and other matters concerning, United States Savings Bonds prescribe merely a convenient

method for the discharge by the United States of its obligations on such bonds, or, as the courts of many states have held and the Treasury Department of the United States has consistently urged, do these regulations also, in the absence of fraud, control the beneficial ownership of such bonds irrespective of the laws of particular states?

STATUTE AND REGULATIONS INVOLVED

This case involves the interpretation of certain regulations promulgated by the Secretary of the Treasury of the United States in the exercise of the authority vested in him by Section 22(a) of the Second Liberty Bond Act as amended, 55 Stat. 7, 31 U.S.C. § 757c(a). That statute provides:

> "The Secretary of the Treasury, with the approval of the President, is authorized to issue from time to time, through the Postal Service or otherwise, United States savings bonds and United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by Section 21 of this Act, as amended [31 U.S.C. § 757b], and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b), (c), and (d) hereof, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe."

The pertinent regulations, 31 C.F.R. §§ 315.0, *et seq.*, are set forth in the Appendix (pp. 35-38).

STATEMENT

Petitioner John W. Free and his late wife, Ida Free, lived during the many years of their marriage and until Mrs. Free's death together in the State of Texas (R. 1). During the marriage, in the years 1941 through 1945, Petitioner purchased a number of United States Savings Bonds of the "E" and "F" series, using for that purpose community funds of himself and his wife, and registered each of them in the names of himself "or" his wife (R. 2-3).[1] The relevant regulations of the Secretary of the Treasury, incorporated by reference on the face of all United States Savings Bonds, provide that under this form of registration the persons named are "coowners" of the bonds [31 C.F.R. § 315.7(a)(2)], that upon the death of one "the survivor will be recognized as the sole and absolute owner" [31 C.F.R. § 315.61], and that "[n]o judicial determination will be recognized which would . . . defeat or impair the rights of survivorship conferred by these regulations" [31 C.F.R. § 315.20(a)]. See Appendix, pp. 35, 36, 37.

Ida Free died testate in Texas in April, 1958. In her will Respondent James F. Bland, a son of Ida Free by a previous marriage, was named both executor and residuary legatee (R. 2-3).

In March 1959, Petitioner brought suit in the Dis-

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[1] The bonds were variously registered in the names of "Mrs. Mary Ida Free or John W. Free", "John W. Free or Mrs. Mary Ida Free", "John W. Free or Mary Ida Free", "John W. Free or Mrs. Ida Free", and "J. W. Free or Mrs. Ida Free". In each case the designation referred to Petitioner and his wife.

trict Court of Upshur County, Texas (R. 1), seeking a judicial declaration that upon the death of his wife Petitioner became the sole owner of the bonds above referred to, and that Respondent had no interest in said bonds either as executor of the estate of Ida Free or as legatee under her will. Respondent answered, controverting Petitioner's claim, and filed a cross-action alleging that because the bonds had originally been purchased with community property of Petitioner and Ida Free, Respondent became the owner of a one-half interest in the bonds at the date of Ida Free's death or was in any event entitled to a judgment against Petitioner for a sum equal to one-half the value of the bonds. In this answer and cross-action Respondent also alleged that the bonds had been initially purchased by Petitioner J. W. Free "without the knowledge or consent of Ida Free, his wife" (R. 23), but no fraud was alleged and Respondent agreed that Mr. and Mrs. Free "lived together as husband and wife until the date of the death of the said Ida Free, on April 23, 1958" (R. 22), almost seventeen years after the first bond purchase and more than twelve years after the last one (R. 1-3, 23-25). In his answer to the cross-complaint, Petitioner denied, *inter alia*, the allegation that the bonds had been purchased without the knowledge or consent of his wife (R. 27).

On Petitioner's motion for summary judgment (R. 5), the district court adjudged Petitioner to be the owner of the bonds in controversy. At the same time, however, the court entered judgment for Respondent against Petitioner for one-half the value of the bonds, and declared a lien against the bonds for the amount of this judgment. In substance, therefore, Petitioner's claim that he was entitled to absolute ownership of the

bonds was rejected and Respondent's claim to one-half of the bonds was upheld.

Petitioner appealed to the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas, urging that the trial court had erred in failing to follow a controlling decision of the Texas Supreme Court [*Ricks* v. *Smith*, 159 Tex. 280, 318 S.W. 2d 439 (1958)] which had held that questions of ownership of and rights in United States Savings Bonds are controlled not by state law but by the federal regulations, duly promulgated by the Secretary of the Treasury of the United States, under which those bonds are issued. The Court of Civil Appeals affirmed the judgment of the trial court insofar as it found Petitioner to be the owner of the bonds, and reversed that judgment insofar as it had awarded to Respondent one-half their value, agreeing with Petitioner that the case was directly controlled by *Ricks* v. *Smith*, *supra*, which had held the federal regulations to be applicable and dispositive. The court expressly noted that Respondent had not alleged that Petitioner's action in purchasing and registering the bonds had constituted a fraud, actual or constructive, upon Petitioner's wife, and that the facts of record demonstrated the absence of any fraud (R. 35-36).

Respondent sought review of this judgment in the Texas Supreme Court by writ of error (R. 38). While the application for the writ was pending, that court handed down its decision in *Hilley* v. *Hilley*, 161 Tex. 569, 342 S.W. 2d 565 (1961) (Appendix B to Petition for Certiorari, pp. 13a *et seq.*), a case involving not United States Savings Bonds but corporate securities. In that case the Supreme Court of Texas held that where corporate securities were purchased with funds constituting community property, their registration at

the joint request of the husband and wife in coownership form purporting to provide for survivorship did not serve to sever such securities from the community estate and that, accordingly, on the death of either spouse one-half of such securities passed to his or her estate regardless of the purported survivorship registration. The court stated that under Texas law, in order to permit community property to pass *in toto* by survivorship, it must first be partitioned by a formal agreement meeting the requirements of Article 4624a of the Texas Civil Code; jointly owned (but not community) property may then be made the subject of a written survivorship agreement executed between husband and wife which meets the requirements of Section 46 of the Texas Probate Code. See 161 Tex. at 579, 342 S.W. 2d at 571, Appendix B to Petition for Certiorari, p. 24a.[2]

In the course of its opinion in the *Hilley* case, the Supreme Court of Texas specifically overruled its prior

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[2] Article 4624a, Tex. Civ. Stat. (Vernon, 1960), provides that a husband and wife may partition community property "in severalty or into equal undivided interests", but this can be done only "by a written instrument subscribed and acknowledged by both spouses in the manner now required by law for the conveyance of realty". Section 46 of the Texas Probate Code (Vernon, 1956) prohibits survivorship in the case of jointly owned property unless provided "by an agreement in writing of joint owners of property."

On May 15, 1961, largely as a result of the decision in the *Hilley* case, the Texas legislature amended the law by adding to Section 46 of the Probate Code the further specific provision that "any husband and his wife may, by written agreement, create a joint estate out of their community property, with rights of survivorship." Tex. Sess. Laws, 57th Reg. Sess. 1961, Ch. 120, 3 Vernon's Tex. Sess. Law Serv. 233 (1961).

decision in *Ricks* v. *Smith, supra,* stating that "the Federal regulations do not override our local laws in matters of purely private ownership. . . ." From this it followed that United States Savings Bonds, like ordinary corporate securities, purchased by a husband and wife with community property and registered in their names as coowners, would on the death of one be treated in Texas not as the property of the other, as provided by the Treasury Regulations, but as community property belonging half to the surviving spouse and half to the estate of the deceased spouse. See 161 Tex. at 577, 342 S.W. 2d at 570, Appendix B to Petition for Certiorari, pp. 20a-25a.

On the basis of this decision the Texas Supreme Court thereupon reversed the judgment of the Court of Civil Appeals in this case and affirmed that of the trial court, awarding half of the value of the bonds to Respondent, the residual legatee and executor of the estate of Mrs. Free, the deceased spouse (R. 53).

SUMMARY OF ARGUMENT

I. The Treasury Regulations applicable to United States Savings Bonds were validly issued pursuant to Section 22(a) of the Second Liberty Bond Act of 1917, as amended [31 U.S.C. §757c (a)]. Similar regulations in effect prior to reenactment of this statutory provision in 1941 (55 Stat. 7) were thereby ratified and approved by Congress. And this Court has held that a comparable provision of the National Service Life Insurance Act with respect to designation of beneficiaries properly supersedes inconsistent state law. *Wissner* v. *Wissner,* 338 U.S. 655.

The principal argument urged in support of the decision below—that the Treasury Regulations with

respect to survivorship of coowner Savings Bonds are intended only to provide a convenient means for discharge of the Government's Savings Bond obligations and are not intended to supersede state law with respect to ownership of the proceeds—is refuted by the plain language of the regulations themselves. The specific provision that "no judicial determination will be recognized which would . . . defeat or impair the rights of survivorship conferred by these regulations" makes it clear that the intent is in fact to fix ownership in the survivor as a feature of coowner Savings Bonds, regardless of state property law—a feature that renders them particularly suitable and attractive to certain classes of investors. The Treasury Department has consistently so interpreted its regulations, and the overwhelming weight of authority of the courts which have considered the question supports this interpretation.

The contrary judgment of the Supreme Court of Texas that a husband and wife in that state cannot obtain the survivorship benefits provided by the regulations if they buy Savings Bonds with their community property must therefore be reversed.

II. The bonds here were properly registered in the names of Mr. "or" Mrs. Free, as coowners. No fraud was alleged by Respondent below, and no fraud is shown on this record. Since this case arises on motion for summary judgment, the controverted allegation that the bonds were initially purchased without the knowledge or consent of Petitioner's wife presents an issue of fact which, if controlling, must be set down for trial. Even if this allegation is assumed to be true, however, this fact alone would not constitute such fraud or impropriety as to make coowner registration of the bonds

improper or defeat the survivorship provided by the regulations. The Texas Court of Civil Appeals, the only court below which considered this question, so held. In a situation in which, as that court put it, whether he or his wife would die first was "unpredictable," Petitioner chose in good faith to invest certain of the community property of himself and his wife in United States Savings Bonds, registered in the only form available to coowners, in accordance with the full authority given to him under Texas law to manage and invest the community estate. Under these circumstances, regardless of whether he or his wife died first, the survivorship provided for by the Treasury Regulations should be given full force and effect.

ARGUMENT

At the outset it should be noted that the decision of the Supreme Court of Texas is not based on any theory that the coownership registration of the United States Savings Bonds in question constituted a fraud on the rights of any party. The holding of that court, as explained in its opinion in the *Hilley* case, is that, although full ownership of community property is admittedly in the husband and wife jointly and in no one else, this property may not be used by either or both of them to purchase United States Savings Bonds in coownership form so as to obtain the survivorship benefits provided to such coowners by federal law and regulations:

> "It is clear that the Federal Regulations do not override our local laws in matters of purely private ownership. . . ." (161 Tex. at 577, 342 S.W. 2d at 570, Appendix B to Petition for Certiorari, p. 22a).

In the view taken by the court below, the result is the same whether the purchase of the Savings Bonds is made by the husband alone (as manager of the community estate) or by both husband and wife acting together; in either case, if the funds which were used for the bond purchase constituted community property, the surviving spouse is not to be recognized in Texas as "the sole and absolute owner" of the bonds as provided by the Treasury Regulations, because such a holding would be inconsistent with the provisions of Texas law with respect to the procedure required to sever community property.[3]

We shall urge in Point I below that the applicable Treasury Regulations are in fact intended to and do, absent fraud, establish in the surviving spouse full and absolute ownership of United States Savings Bonds properly registered in coownership form in the names of husband and wife, regardless of whether this result would otherwise follow under local property law. This requires that the contrary judgment of the court

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[3] In the *Hilley* case itself, the husband and wife acting together had used community property to buy corporate bonds registered in coownership form purporting to provide for survivorship, and the wife died first. In *Ricks* v. *Smith*, *supra*, 159 Tex. 280, 318 S. W. 2d 439 (1958), the husband alone had used community property to buy United States Savings Bonds which he registered in coownership form, and the husband himself died first. Under the court's opinion in the *Hilley* case, no survivorship is allowed in either situation, the court having concluded that "the Ricks case should be overruled, and we will not follow the same where 'or' bonds are purchased with community funds and issued in the names of the spouses as co-owners" (161 Tex. at 578, 342 S.W. 2d at 571, Appendix B to Petition for Certiorari, p. 23a).

below must be reversed. Thereafter, in Point II, we shall urge that even if the controverted allegation that the bonds were purchased without the knowledge or consent of Petitioner's wife is assumed to be true, this alone would not constitute impropriety or fraud in the initial registration of ownership of these bonds which could affect this survivorship.

I

The Treasury Regulations Effectively Provide for Survivorship of Properly Registered Coowner Savings Bonds Regardless of Whether Such Survivorship Is Recognized or Permitted by Local Law

Acting pursuant to Article I, Section 8 of the Constitution,[4] Congress in 1935 amended the Second Liberty Bond Act of 1917 (40 Stat. 288, 506) by adding thereto a new Section 22 (49 Stat. 21). Section 22(a), as amended and reenacted in 1941 [55 Stat. 7, 31 U.S.C. § 757c(a)], specifically authorizes the Secretary of the Treasury with the approval of the President to issue "United States savings bonds and United States Treasury savings certificates." This statute further provides that:

> "The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts . . . and shall be issued in such manner and subject to such terms and conditions . . . , and including any restrictions

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[4] "The Congress shall have Power . . . To borrow Money on the credit of the United States. . . ."

on their transfer, as the Secretary of the Treasury may from time to time prescribe."[5]

In accordance with this authority, the Secretary of the Treasury has promulgated and amended from time to time comprehensive regulations with respect to United States Savings Bonds and Certificates. These regulations are contained in Treasury Department Circular 530, now included as Section 315 of Title 31, Code of Federal Regulations. Those pertinent here are contained in the Appendix to this brief (pp. 35-38).

All of the bonds in question here were purchased in the period 1941-1945 (R. 2-3), and were registered in the coownership form prescribed by Section 315.7(a)(2), in the name of Petitioner John W. Free "or" his wife, Mrs. Ida Free. Section 315.61 of the regulations provides that, with bonds so registered, "if either coowner dies without the bond having been presented and surrendered for payment or authorized reissue, the survivor will be recognized as the sole and absolute owner." Section 315.20(a) emphasizes the objective of the regulations to insure these rights of survivorship by providing specifically that "no judicial determination will be recognized which would . . . defeat or impair the rights of survivorship conferred by these Regulations upon a surviving coowner. . . ."

Petitioner does not understand that Respondent contends here that these regulations are invalid or beyond

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[5] The statutory language authorizing the Secretary of the Treasury to prescribe the terms and conditions of these savings bonds and certificates is drawn largely from the language of § 6 of the original Second Liberty Bond Act of 1917, 40 Stat. 291, but with the addition of the specific authority to include "any restrictions on their transfer."

the statutory or constitutional authority of the Secretary of the Treasury to prescribe, and indeed no such argument could seriously be advanced. Federal regulations promulgated in the exercise of a constitutional power duly delegated by Congress have in all respects the force and effect of federal law, and by virtue of Article VI of the Constitution of the United States are "the supreme law of the land". The authority of the Secretary of the Treasury to issue comparable regulations with respect to War Savings certificates and stamps issued pursuant to Section 6 of the Second Liberty Bond Act of 1917 was upheld by this Court in two criminal actions, *United States* v. *Sacks*, 257 U.S. 37, and *United States* v. *Janowitz*, 257 U.S. 42. See also *Warren* v. *United States*, 68 Ct. Cl. 634 (1929), *cert. denied*, 281 U.S. 739.*

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* It should also be noted that for several years prior to the reenactment in 1941 (55 Stat. 7) of Section 22 of the Second Liberty Bond Act, added in 1935 (49 Stat. 21), Treasury Regulations issued under this section had provided for survivorship with respect to coowner registered bonds and stated that no judicial proceedings "will be recognized if they would . . . impair the rights of survivorship conferred by these regulations upon coowners. . . ." See Circular 530, Second Revision of December 15, 1938, 31 C.F.R. (1938 Supp.) §§ 315.10, 315.15(a), 3 Fed. Reg. 3128. Reenactment of Section 22(a) by Congress in 1941 under these circumstances constituted legislative approval of this administrative action. *Commissioner* v. *Flowers*, 326 U.S. 465, 469; *Boehm* v. *Commissioner*, 326 U.S. 287, 291-92; *Helvering* v. *Winmill*, 305 U.S. 79, 83.

The legislative history of the 1941 reenactment makes it clear that it was the purpose of Congress to make even broader the discretion of the Secretary of the Treasury in prescribing such terms and conditions of Savings Bonds as would make them attractive to investors on a broad basis. Secretary Morgenthau emphasized

Furthermore, this Court has upheld the application of a comparable provision of the National Service Life Insurance Act with respect to designation of beneficiaries of such insurance policies. *Wissner* v. *Wissner*, 338 U.S. 655. In this case a soldier purchased National Service Life Insurance with funds which constituted community property of himself and his wife under applicable California law. Relying on the provisions of the National Service Life Insurance Act [38 U.S.C. § 802(g)], he designated persons other than his wife as beneficiaries. On his subsequent death the California state courts held that under California law the proceeds of the policy were the community property of the widow and the decedent's estate, and entered judgment in favor of the widow for one-half of such proceeds. This Court reversed, holding that the purpose and policy of the National Service Life Insurance Act to give policyholders the right to designate beneficiaries, an objective "within the Congressional powers of national defense", controlled in spite of the conflicting provisions of California community property law.

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this point in the hearings on the bill when he said that it "provides authority to issue securities on such terms and in such denominations as will enlist support from the largest number of subscribers." *Hearings on H.R. 2959 before the Senate Committee on Finance*, 77th Cong., 1st Sess., p. 5 (1941). On the floor, Representative Doughton said that the Congressional intent was to give "greater flexibility to our defense financing program". He added: "It is felt that if the Secretary of the Treasury has wider discretion with respect to these important aspects, it will better enable the Treasury to issue the exact type of security which might best meet the needs of particular types of investors". 87 Cong. Rec. 850 (1941).

Nor can it be urged that the Treasury Regulations, properly read, are intended merely to provide a convenient method whereby the United States can discharge its obligation with respect to United States Savings Bonds by payment, leaving the states free in all cases to order any retransfer or repayment of the proceeds of such bonds which they deem consistent with their personal property laws. Examination of the survivorship provisions of the regulations with respect to coowner bonds leaves no room for doubt that their intent is to fix absolute ownership in the surviving coowner or beneficiary as an additional feature of the security itself—a feature which becomes an integral part of the contract between the bondholder and the United States—and not merely to provide a means of protecting the Treasury in making payment to such survivor or beneficiary. The actual language used is consistent only with such an interpretation, and amendments made in the regulations from time to time have plainly been designed to eliminate possible ambiguities on this score. In addition, the Treasury Department has officially and publicly so construed its regulations in interpretative memoranda issued since at least 1945, and has consistently taken this position in private litigation with respect to bond ownership. Such interpretation by an agency of its own regulations is entitled to great weight. *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410, 414. Finally, an overwhelming majority of the courts which have considered the question have so interpreted and applied the regulations.

A. THE LANGUAGE OF THE REGULATIONS IS DIRECTED TO OWNERSHIP, NOT METHOD OF PAYMENT

The applicable Treasury Regulations are contained in Treasury Circular 530, first issued in 1935 and revised from time to time. The latest (eighth) revision was promulgated December 31, 1957, and is contained in Title 31, Part 315, Code of Federal Regulations (Appendix, pp. 35-38). Section 315.0 provides that these regulations "apply generally to all United States Savings Bonds of all series of whatever designation, bearing any issue dates whatever", subject to the limitation contained in Section 315.93 that nothing in the regulations shall "limit or restrict any existing rights which holders of savings bonds heretofore issued may have acquired" under circulars or regulations in force at the time of purchase.

The starting point in construing these regulations must be the provision prescribing the registration form of the bonds. Section 315.5 requires that the purchaser of the bond must express its actual ownership accurately in its registration: "The form of registration used must express the actual ownership of and interest in the bond and . . . will be considered as conclusive of such ownership and interest", except for correction of errors (Section 315.48) and except for a limited effect permitted to be given to judicial determinations of ownership in Subpart E of the regulations (discussed below).[7] All of the bonds in question here, purchased

[7] In the First Revision of Circular 530 (the earliest version published in the Federal Register), there was no explicit requirement that the form of registration must express actual ownership of the bond. See 31 C.F.R. (Orig. ed. 1937) § 315, 1 Fed. Reg. 2212. In the Second Revision in 1938, it was stated that the form of registration used "should" express the actual ownership. See 31

with the community property of Mr. and Mrs. Free, were properly registered in their names as "coowners" under Section 315.7(a)(2).

Implementing these coownership registration provisions, Section 315.15 provides that "Savings bonds are not transferable and are payable only to the owners named thereon, except as specifically provided in the regulations in this part and then only in the manner and to the extent so provided. . . ."[8]

Section 315.61 further provides explicitly that "[i]f either coowner dies without the bond having been presented and surrendered for payment or authorized reissue, the survivor will be recognized as the sole and absolute owner."[9] That this survivorship provision,

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C.F.R. (1938 Supp.) § 315.1(a), 3 Fed. Reg. 3128. The word "should" was replaced with the present word "must" by the Third Revision of March 27, 1940. See 31 C.F.R. (1940 Supp.) § 315.2(a), 5 Fed. Reg. 1267.

[8] The provision in substantially this form was first included in Circular 530, Second Revision, December 15, 1938, 31 C.F.R. (1938 Supp.) § 315.2, 3 Fed. Reg. 3128. Prior thereto this regulation had contained the additional exception of "as the result of judicial proceedings". 31 C.F.R. (Orig. ed., 1937) § 315.2, 1 Fed. Reg. 2212.

[9] A survivorship provision has been included in Circular 530 since the beginning. See 31 C.F.R. (Orig. ed. 1937) § 315.10, 1 Fed. Reg. 2212. The Fourth Revision, effective May 1, 1941, first included the language that "the surviving co-owner will be recognized by the Treasury Department as the sole and absolute owner of the bond. . . ." See 31, C.F.R. (1941 Supp.) § 315.11(a)(2), 6 Fed. Reg. 2191. To make even clearer that this was intended to control actual ownership and not merely administrative action by the Treasury Department, the words "by the Treasury Department" were deleted in the Fifth Revision of June 17, 1943. See 31 C.F.R. (1943 Supp.) § 315.22(b), 8 Fed. Reg. 8744. The

like the limitation on *inter vivos* transfer or pledge of the bonds, and like the beneficiary provisions of Section 315.65 (Appendix, pp. 37-38), is intended to determine the substantive ownership of the bonds and not provide merely a convenient method of payment by the Treasury is confirmed by the provisions of Subpart E of the Regulations, which is entitled "Limitation on Judicial Proceedings; No Stoppage or Caveats Permitted." Section 315.20(a) provides:

> "No judicial determination will be recognized which would give effect to an attempted voluntary transfer inter vivos of a bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary, and all other provisions of this subpart are subject to this restriction." [10]

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present survivorship language, not materially changed, was adopted in the Eighth Revision of December 31, 1957. See 31 C.F.R. § 315.61 (1959), 22 Fed. Reg. 11065.

[10] The First Revision of Circular 530 provided that payment would be made "in accordance with a judgment or decree of a court of competent jurisdiction . . . except in cases where the action is instituted for the purpose of giving effect to an attempted transfer by the owner contrary to § 315.2" [the regulation then prohibiting such transfer]. See 31 C.F.R. (Orig. ed., 1937) § 315.15(a), 1 Fed. Reg. 2212. Since this provision could be read as permitting a judicial determination under state law to defeat survivorship rights, the present language expressly negativing this conclusion was included in the Second Revision of Circular 530 of December 15, 1938 in the form of a proviso that "no such proceedings will be recognized if they would give effect to an attempted voluntary transfer of the bonds or would defeat or impair the rights of survivorship conferred by these regulations upon coowners and beneficiaries". See 31 C.F.R. (1938 Supp.) § 315.15 (a), 3 Fed. Reg. 3128. This language was thereafter continued

The regulations then go on to provide that subject to the foregoing limitation certain judicial proceedings may establish ownership claims to the bonds. The use of the expression "rights of survivorship *conferred* by these regulations upon a surviving coowner or beneficiary," coupled with the provision prohibiting recognition of any judicial determination which would "defeat or impair" such rights, lays to rest any question of the intent or purpose sought to be accomplished.

The regulations are incorporated by reference in the Savings Bonds themselves, and it is plain beyond cavil that they are intended to confer upon those who choose to invest their money in these bonds the assured substantive rights of survivorship provided—a feature that can and does make such bonds a more attractive investment than they would otherwise be. Such assurance constitutes a "term or condition" of the bond which carries out the Constitutional power "to borrow money on the credit of the United States," and appropriately implements the Congressional policy expressed by Respresentative Doughton with respect to the 1941 reenactment of the basic Savings Bond law, to "enable the Treasury to issue the exact type of security which might best meet the needs of particular types of investors." 87 Cong. Rec. 850 (1941); see note 6, pp. 14-15, *supra*.

B. THE TREASURY DEPARTMENT HAS CONSISTENTLY INTERPRETED THE SURVIVORSHIP REGULATIONS AS CONTROLLING SUBSTANTIVE OWNERSHIP

As stated in the brief *amicus curiae* of the United States, the Treasury Department has for many years taken the position that its survivorship and beneficiary

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in subsequent revisions, the present language having been adopted in the Eighth Revision of December 31, 1957. See 31 C.F.R. § 315.20(a) (1959), 22 Fed. Reg. 11065.

regulations were intended to control substantive ownership of the bonds and their proceeds as part of the contract between the United States and the bondholder, and not to provide merely a convenient method of discharging the Government's monetary obligation. For almost twenty years, the Treasury has consistently participated as *amicus curiae*, through United States attorneys, in private litigations in which this question was known to be presented and has consistently urged that substantive legal effect be given to its savings bond regulations. See, *e.g.*, In re *Di Santo's Estate*, 142 Ohio St. 223, 51 N.E. 2d 639 (1943); *Franklin Washington Trust Co.* v. *Beltram*, 133 N.J. Eq. 11, 29 A.2d 854 (1943); In re *Murray's Estate*, 236 Iowa 807, 20 N.W. 2d 49 (1945); *Harvey* v. *Rackliffe*, 141 Me. 169, 41 A. 2d 455 (1945). In addition, a memorandum setting forth these views has been publicly circulated to issuing banks and others since 1945, and has been widely distributed in response to inquiries received. A copy of the current revision of this memorandum is included as an appendix to the Government's brief *amicus curiae* here.

The Treasury Department's long-standing interpretation of its own regulations should be given controlling effect. As this Court stated in *Bowles* v. *Seminole Rock & Sand Co.*, 325 U.S. 410, 414:

> ". . . a court must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt. The intention of Congress or the principles of the Constitution in some situations may be relevant in the first instance in choosing between various constructions. But the ultimate criterion is the ad-

ministrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation."

C. THE OVERWHELMING WEIGHT OF AUTHORITY OF THE COURTS WHICH HAVE CONSIDERED THE QUESTION SUPPORTS THE TREASURY DEPARTMENT'S INTERPRETATION OF ITS REGULATIONS

In the quarter century since enactment of the 1935 amendment authorizing issuance of United States Savings Bonds, the question of the effect to be given the Treasury Regulations with respect to survivorship and transferability of bonds registered in coownership or beneficiary form has come up in literally dozens of reported cases. These have been adequately compiled and classified elsewhere,[11] and it would serve no useful purpose to repeat these citations here. Even a cursory review of these decisions makes it clear that, with only a few aberrations (including that of the court below), the various courts that have considered the question have sustained the Treasury's view that, in the absence of fraud, the rights of survivorship conferred by the regulations and incorporated in coowner and beneficiary bonds are conclusive and cannot be defeated by the applicability of inconsistent rules of state law.

Typical cases involve conflict with state law with

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[11] Cases involving bonds registered in coowner form, as here, are collected in 37 A.L.R. 2d 1221 and supplements thereto. A number of the cases involving beneficiary registered bonds are included in annotations in 168 A.L.R. 245 and 173 A.L.R. 550. Decisions dealing with the related question of the transferability of such bonds are compiled in 40 A.L.R. 2d 788 and supplements thereto.

respect to descent and distribution of property,[12] requirements for valid gifts *inter vivos*,[13] or abolition of or limitation on survivorship of jointly owned property.[14] In each situation, it has been recognized that, as the Supreme Court of Arizona succinctly put it, "the state constitution and statutes must yield to Federal laws which are the supreme law of the land." *Lee* v. *Anderson*, 70 Ariz. 208, 214, 218 P.2d 732, 736 (1950).

The minority position is typified by *Slater* v. *Culpepper*, 222 La. 962, 64 So. 2d 234 (1953) cited by the court below in its *Hilley* opinion. Here the Supreme Court of Louisiana refused to recognize the survivorship provisions of the regulations with respect to coowner bonds bought with community property by the wife acting for herself and her physically disabled husband, the wife then having died first. In holding that the surviving husband had only a half

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[12] See, *e.g.*, Ex parte *Little*, 259 Ala. 532, 67 So. 2d 818 (1953); *Umberger* v. *Westmoreland*, 218 Ark. 632, 238 S.W. 2d 495 (1951); In re *Stanley's Estate*, 102 Colo. 422, 80 P.2d 332 (1938); In re *Briley's Estate*, 155 Fla. 798, 21 So.2d 595 (1945); *Reynolds* v. *Reynolds*, 325 Mass. 257, 90 N.E.2d 338 (1950); *Berman* v. *Frendel*, 154 Me. 337, 148 A.2d 93 (1959); *Stephens* v. *First Nat. Bank of Nevada*, 65 Nev. 352, 196 P.2d 756 (1948); In re *Gilger's Estate*, 109 N.E.2d 333 (Ohio P. Ct. 1952).

[13] See, *e.g.*, *Lee* v. *Anderson*, 70 Ariz. 208, 218 P.2d 732 (1950); *Knight* v. *Wingate*, 205 Ga. 133, 52 S.E.2d 604 (1949); *Harvey* v. *Rackliffe*, 141 Me. 169, 41 A.2d 455 (1945); *Stephens* v. *First Nat. Bank of Nevada*, 65 Nev. 352, 196 P.2d 756 (1948); *In re Cochran's Estate*, 398 Pa. 506, 159 A.2d 514 (1960).

[14] See, *e.g.*, *Lee* v. *Anderson*, 70 Ariz. 208, 218 P.2d 732 (1950); *Lemon* v. *Foulston*, 169 Kan. 372, 219 P.2d 388 (1950); *Waltenberger* v. *Pearson*, 81 Ohio App. 51, 77 N.E.2d 491 (1946); In re *Chittock's Estate*, 106 N.E. 2d 320 (Ohio P. Ct. 1952).

interest in the bonds, the court said (222 La. at 970, 64 So. 2d at 237):

> "Manifestly, these regulations . . . were designed solely to facilitate the Government, by providing a simple method for the payment of savings bonds, so that it would not be subjected to the inconvenience and delays attendant to the settlement of conflicting or disputed claims." [15]

This approach, that the Treasury Regulations do not control ownership but merely provide a convenient method of discharging the Treasury's obligation, was apparently first advanced some twenty years ago by the Supreme Court of Washington in *Decker* v. *Fowler,* 199 Wash. 549, 92 P. 2d 254 (1939), a decision which was promptly repudiated by state legislation [Wash. Rev. Stat. (Rem. Supp. 1943), §§ 11548-60, 11548-61]. The court below rested its decision on the same erroneous interpretation of federal law when it said that "the federal regulations do not override our local laws in matters of purely private ownership where the interests of the United States are not involved", citing *Bank of America N.T. & S.A.* v. *Parnell,* 352 U.S. 29 (161 Tex. at 578, 342 S.W. 2d at 570, Appendix B to Petition for Certiorari, p. 22a).

The fallacy in this statement arises from the er-

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[15] Similar expressions have occasionally been used in tax cases in the federal courts involving the question of whether effect could be given to attempted *inter vivos* gifts of coowner or beneficiary Savings Bonds. See, *e. g., Silverman* v. *McGinnes,* 259 F.2d 731, 733 (3d Cir. 1958); *District of Columbia* v. *Wilson,* 94 U.S. App. D.C. 399, 403, 216 F.2d 630, 633 (1954).

roneous assumption that "the interests of the United States are not involved" in the question of the ownership of a Savings Bond on the death of a coowner.[16] This question was put in proper perspective by the Supreme Court of Nevada in upholding survivorship in *Stephens* v. *First National Bank of Nevada,* 65 Nev. 352, 196 P. 2d 756 (1948). After stating that the Treasury Regulations "having the force of Federal Law must be held to supersede inconsistent State Laws by virtue of the supremacy clause of the Constitution", that court emphasized that any other decision "would tend to destroy the power of the United States to sell bonds", because the availability of the survivorship provisions was "one of the reasons why said bonds became and were and are attractive investments and aided in the sale thereof" (65 Nev. at 365, 196 P. 2d at 762).

II

The Savings Bonds Were Properly Registered in the Names of Mr. or Mrs. Free as Coowners, and No Fraud Is Shown on This Record

Petitioner has not at any point in this case contended that the Treasury Regulations with respect to coownership or survivorship have the purpose or

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[16] The *Bank of America* case involved merely the question of who had the burden of proof on the issue of whether bearer bonds of the Government were purchased in good faith. This Court held that the federal interest under these circumstances was too remote to justify the application to this question of a federal rule in lieu of state commercial law. Even here, the Court stated that "Federal law, of course, governs the interpretation of the nature of the rights and obligations created by the Government bonds themselves" (352 U.S. at 34).

effect of providing a refuge against fraud. The basic provision of Section 315.5 that the form of registration "*must* express the actual ownership of and interest in the bond" necessarily implies that the purchaser or purchasers must own or have authority so to invest the funds used. See, *e.g., Katz* v. *Driscoll*, 80 Cal. App. 2d 313, 194 P. 2d 822 (1948). If such ownership or authority exists, however, the fact that a coownership or beneficiary registration of the bond would not be effective under state law to vest the intended property interest in a coowner, survivor or beneficiary is immaterial. That property interest is determined by the contract between the purchaser or purchasers and the United States, as fixed in the terms of the bond and the controlling Treasury Regulations which are made a part thereof.

A. REGISTRATION OF THE BONDS IN COOWNERSHIP FORM PROPERLY EXPRESSED THEIR ACTUAL OWNERSHIP

United States Savings Bonds purchased by a husband and wife with their community property and registered in the coownership form prescribed by Section 315.7(a)(2) plainly meet the requirement that the "registration must express the actual ownership of and interest in the bond." The husband and wife, and only the husband and wife, have an interest in this community property, and they, and only they, have an interest in the Savings Bond which they purchase with such property. The fact that such bond purchase in conjunction with subsequent events may effect a severance of this community property in a way not recognized by state law is one of the intended benefits conferred by the Treasury Regulations incorporated in the terms and conditions of the bond, and one

of the characteristics of the bond that makes it particularly desirable to many investors.[17]

Joint investment by the husband and wife of their community property in a Savings Bond registered in coownership form, therefore, results in full ownership of the bond in the survivor in accordance with the regulations incorporated by reference in it, contrary to the holding of the Supreme Court of Texas below. The judgment of that court must accordingly be reversed.

A question remains, however, as to what further direction this Court should give on remand of the case in view of the controverted allegation contained in the answer and cross action of Respondent, that Petitioner purchased these bonds without the knowledge or consent of his wife (R. 23). As noted above, the rationale of the Supreme Court of Texas as expressed in the controlling case of *Hilley* v. *Hilley* made this question immaterial, since the result would have been the same regardless of whether the husband alone (as in the overruled case of *Ricks* v. *Smith*) or both parties (as in the *Hilley* case itself) actually effected the purchase using community property.

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[17] In fact, since the coownership registration which was used here is exclusive, it is not otherwise possible for a husband and wife jointly to invest their community property in United States Savings Bonds. Section 315.7(a)(2) states specifically that "[n]o other form of registration establishing coownership is authorized." See Appendix, p. 35.

B. *USE OF COMMUNITY PROPERTY BY A HUSBAND TO PURCHASE COOWNER SAVINGS BONDS IN HIS OWN AND HIS WIFE'S NAME WITHOUT PRIOR CONSULTATION WITH HER DOES NOT ALONE CONSTITUTE FRAUD JUSTIFYING REFUSAL TO RECOGNIZE SURVIVORSHIP*

First of all, it should be noted that this case arises on motion for summary judgment by Petitioner, made on pleadings and affidavits, including pleadings in a cross action filed by Respondent. The only allegations that the bond purchases in question were made by Petitioner "without the knowledge or consent of Ida Free, his wife" are contained in Paragraph IX of Respondent's answer (R. 21) and Paragraphs V and VII of his cross action (R. 23, 25). This and all other facts alleged in the cross petition other than those alleged in Petitioner's original petition were denied by Petitioner in his answer to the cross action (R. 27). Accordingly, under Texas summary judgment procedure, which is based upon and similar to the federal practice,[18] no summary judgment can be granted to either party if this issue is one of material fact.

Both the Court of Civil Appeals and the Texas Supreme Court below considered this factual question not to be material, but for quite different reasons. The Court of Civil Appeals held that, even if the bonds were purchased without the knowledge or consent of Petitioner's wife, as alleged by Respondent but denied by Petitioner, this did not constitute actual or constructive fraud so as to justify a refusal to recognize the survivorship provided by the Treasury Regulations, and it accordingly ordered summary judgment

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[18] Rule 166-A, Vernon's Annotated Texas Rules (1955). This is taken substantially verbatim from Rule 56 of the Federal Rules of Civil Practice, as originally promulgated. See Vernon's Annotated Texas Rules, *supra*, Vol. 1, at p. 478.

entered for Petitioner. The Supreme Court of Texas in turn held that under Texas property law the survivorship was not to be recognized whether or not the bonds had been purchased with the knowledge and consent of the wife, and it therefore affirmed the summary judgment for half the value of the bonds which had been entered by the state district court in favor of Respondent.

Accordingly, if this issue of fact is now considered to be material, the posture of the case is such that it should be remanded for trial.

We believe, however, that the record here justifies the action of the Texas Court of Civil Appeals in ordering entry of summary judgment for Petitioner even if the allegation that the bond purchases were made without his wife's knowledge or consent is assumed to be true. As heretofore pointed out, there is no disagreement that, if Petitioner had purchased these United States Savings Bonds pursuant to a scheme to obtain for himself his wife's share of the community property or otherwise to defraud her, the bonds would in fact have been improperly registered under Section 315.5 of the regulations and the property of which his wife had been so defrauded could be restored to her or her estate on appropriate judicial determination. An example of such a situation might be presented where the husband, acting alone, uses community property to buy coowner bonds in his own and his wife's name in a situation where he knows his wife is suffering from a probably fatal illness and will in all likelihood predecease him.

No allegation of anything approaching such a scheme to defraud was made here. The Texas Court of Civil Appeals summarized the record as follows:

> "There was no pleading in the case at bar that the purchase of the bonds in question was in fraud of the community property rights of Mary Ida Free. The bonds in question were bought with the Free's community funds and were made payable to either Mr. Free or Mrs. Free, in conformity with the U. S. Treasury regulations, and a full twelve years elapsed between the purchase of the bonds and the death of Mrs. Free, and certainly under this record there was no actual fraud shown on the part of the husband in investing community funds in the bonds. It is our further view that under this record the purchase of the bonds and their subsequent passing to the appellant by reason of the unpredictable prior death of Mrs. Free (and under the contractual provisions of the U. S. Treasury regulations) does not in law amount to a constructive fraud upon the estate of Mrs. Free. Also, if Mr. Free had died first and the bonds had passed to Mrs. Free under the contractual treasury regulations we do not think it could be held that a constructive fraud had been committed against Mr. Free's estate by the purchase of the bonds in question under the record in this case." (R. 35-36.)

Under Texas community property law the husband has full authority to manage, invest and reinvest the community estate; as one authority has put it, he is the "managing partner." See Huie, *Commentary on Community Property Law of Texas*, 13 Tex. Civ. Stat. 1, 44 (Vernon, 1960). During coverture, the husband alone can dispose of community property. Tex. Civ. Stat.,

Art. 4619, § 1 (Vernon, 1960). The United States Court of Appeals for the Fifth Circuit accurately summarized the law of Texas when it quoted the statement in *Rowlett* v. *Mitchell*, 52 Tex. Civ. App. 589, 592, 114 S.W. 845, 847 (1908), that the "right of the husband to dispose of the community estate except for the purpose of defrauding his wife is an absolute one . . . he may expend their joint estate ever so unwisely, may squander it in 'riotous living,' or may give it away." *Commissioner* v. *Chase Manhattan Bank*, 259 F.2d 231, 248 (5th Cir. 1958), *cert. denied*, 359 U.S. 913. And no such purpose to defraud is to be inferred from the mere fact that the husband used, invested or donated community property without the wife's knowledge or consent.[19]

Where the husband has this broad authority to deal with the community estate, the mere claim that the wife had not been consulted with respect to the bond purchase—which is all that Respondent has alleged here—is not sufficient to make the coownership registration improper or to defeat the survivorship provided by

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[19] See, e. g., *Warthan* v. *Haynes*, 155 Tex. 143, 288 S.W.2d 481 (1956) [purchase of life insurance naming husband's own estate as beneficiary if his wife predeceased him]; *Martin* v. *McAllister*, 94 Tex. 567, 63 S.W. 624 (1901) [purchase of life insurance in name of wife, naming himself as beneficiary]; *Griffin* v. *Troup Independent School District*, 163 S.W.2d 412 (Tex. Civ. App. 1942) [conveyance of land to school district]; *Locke* v. *Locke*, 143 S.W.2d 637 (Tex. Civ. App. 1940) [self-indulgence in excess of living expenses]; *Shaw* v. *Shaw*, 28 S.W.2d 173 (Tex. Civ. App. 1930) [gifts *causa mortis* of bank deposits and Liberty bonds to son's wife and daughter]; *Rowlett* v. *Mitchell*, 52 Tex. Civ. App. 589, 114 S.W. 845 (1908) [paying premiums on life insurance that named as beneficiaries husband's own children by prior marriage].

the Treasury Regulations.[20] So much at least this Court should make clear on remand. A contrary holding would throw into doubt and confusion the effectiveness of the survivorship provisions of what are undoubtedly millions of dollars of coownership bonds bought by the husband with family savings in the eight community property states,[21] and would defeat the Treasury policy to provide uniform, simple and definitive survivorship rules to all of the many small investors (including investors in these community property states) to whom bonds incorporating such rules are especially attractive. In this situation, "the desirability of a uniform rule is plain." See *Clearfield Trust Co.* v. *United States*, 318 U.S. 363, 367.

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[20] Compare *Wissner v. Wissner*, *supra*, 338 U.S. 655, where the husband used community property to pay premiums on the National Service Life Insurance policy in question not only without his estranged wife's knowledge or consent but under circumstances indicating strongly that he intended thereby to deprive her of any interest in such policy; this Court nevertheless upheld ownership of the proceeds of the policy in the designated beneficiary as provided for by federal law, even though the wife would have been entitled to half of such proceeds under the applicable community property law of the state. The record now before the Court presents a much clearer case for award of the bonds in full to the surviving coowner without regard for what the ownership would have been under Texas community property law.

[21] These states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington. See II Casner, *American Law of Property* (1952) § 7.3.

CONCLUSION

The judgment of the Supreme Court of Texas, refusing to recognize the survivorship of United States Savings Bonds registered in coowner form in accordance with applicable Treasury Regulations, should be reversed.

Respectfully submitted,

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December 22, 1961.